

AMENDED IN SENATE APRIL 18, 2007

AMENDED IN SENATE MARCH 29, 2007

SENATE BILL

No. 942

Introduced by Senator Migden

February 23, 2007

An act to amend Sections 132a, 3201.81, 4658.5, and 4658.6 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 942, as amended, Migden. Workers' compensation.

(1) Existing Workers' Compensation Law requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, or in the course of, employment. Existing law declares that it is the policy of this state that there should not be discrimination against workers who are injured in the course or scope of their employment.

This bill would provide that if, after the employee has been disabled from work as a result of injury or illness arising out of, or in the course of, employment pursuant to which the employee is eligible to receive workers' compensation benefits, the employee is willing and available to return to work, ~~there~~ *there* is a rebuttable presumption that an employer has discriminated against an employee ~~if~~ *here if* the employer refuses to reinstate the employee to his or her regular position with full wages and benefits within 5 working days after receipt of a written statement by the employee's treating physician that the employee is able to perform the full requirements of the employee's regular position, notwithstanding the inherent risks of the position, without risk of further injury to the employee ~~or others~~ being increased due to the effects of the injury or illness. The bill would provide that it shall be presumed

that an employer has discriminated against an employee in violation of these provisions if the employer requires the employee to perform additional physical duties that were not required of the employee prior to his or her injury or illness as a condition for returning to employment, unless the additional physical duties are reasonably required to accommodate the employee's disability.

(2) Existing law provides for the payment of temporary disability indemnity payments to any injured employee under specified circumstances, with certain exceptions, and provides that, if an injury causes permanent partial disability and the injured employee does not return to work for the employer within 60 days of the termination of temporary disability indemnity payments, the injured employee shall receive a supplemental job displacement benefit, as specified. Existing law further provides that an employer shall not be liable for supplemental job displacement benefits if, within 30 days of termination of temporary disability indemnity payments, the employer offers, and the employee rejects, or fails to accept, in the form and manner prescribed by the administrative director, modified work, accommodating the employee's work restrictions, lasting at least 12 months.

This bill would, instead, provide that, for injuries occurring on or after January 1, 2008, if the injury causes ~~compensable~~ *permanent partial disability and the injured employee does not return to work for the employer* within 60 days after the disability becomes permanent and stationary, the employee shall receive a supplemental job displacement benefit, and would revise the amounts of benefits an injured employee would be eligible to receive, as specified.

(3) Existing law provides that the employer shall not be liable for the supplemental job displacement benefit if, within 30 days of the termination of temporary disability indemnity benefits, the employer offers, and the employee rejects, or fails to accept, modified or alternative work, as specified.

This bill instead would provide that an employer shall not be liable for supplemental job displacement benefits if, within 60 days of the disability becoming permanent and stationary, the employer offers the injured employee regular work, modified work, or alternative work, and, the employee rejects, or fails to accept, modified or alternative work. It would also make a technical, clarifying change.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 132a of the Labor Code is amended to
2 read:

3 132a. (a) It is the declared policy of this state that there should
4 not be discrimination against workers who are injured in the course
5 and scope of their employment. It is further the policy of this state
6 that there should not be discrimination against employees who
7 attempt to exercise their rights under subdivision (d) of Section
8 4600.

9 (b) (1) Any employer who discharges, or threatens to discharge,
10 or in any manner discriminates against any employee because he
11 or she has filed or made known his or her intention to file a claim
12 for compensation with his or her employer or an application for
13 adjudication, or because the employee has received a rating, award,
14 or settlement, is guilty of a misdemeanor and the employee's
15 compensation shall be increased by one-half, but in no event more
16 than ten thousand dollars (\$10,000), together with costs and
17 expenses not in excess of two hundred fifty dollars (\$250). Any
18 such employee shall also be entitled to reinstatement and
19 reimbursement for lost wages and work benefits caused by the acts
20 of the employer.

21 (2) Any insurer that advises, directs, or threatens an insured
22 under penalty of cancellation or a raise in premium or for any other
23 reason, to discharge an employee because he or she has filed or
24 made known his or her intention to file a claim for compensation
25 with his or her employer or an application for adjudication, or
26 because the employee has received a rating, award, or settlement,
27 is guilty of a misdemeanor and subject to the increased
28 compensation and costs provided in paragraph (1).

29 (3) Any employer who discharges, or threatens to discharge, or
30 in any manner discriminates against any employee because the
31 employee testified or made known his or her intentions to testify
32 in another employee's case before the appeals board, is guilty of
33 a misdemeanor, and the employee shall be entitled to reinstatement
34 and reimbursement for lost wages and work benefits caused by
35 the acts of the employer.

36 (4) (A) If, after the employee has been disabled by an injury
37 or illness arising out of, or in the course of, employment, the
38 employee is willing and available to return to work, it shall be

1 presumed that an employer has discriminated against an employee
2 in violation of paragraph (1) if the employer refuses to reinstate
3 the employee to full wages and benefits within five working days
4 after receipt of a written statement by the treating physician that
5 the employee is able to perform the full requirements of the
6 employee's regular position, notwithstanding the risks inherent in
7 the position, without a risk of further injury to the employee ~~or~~
8 ~~others~~ being increased due to the effects of the injury or illness.
9 This presumption is rebuttable and may be controverted by ~~other~~
10 *a preponderance of the evidence*, but unless so controverted, the
11 appeals board is bound to find in accordance with it.

12 (B) It shall be presumed that an employer has discriminated
13 against an employee in violation of paragraph (1) if the employer
14 requires the employee to perform additional physical duties that
15 the employee was not required to perform prior to the injuries or
16 illness as a condition of returning to work, unless the additional
17 physical duties are reasonably required to accommodate the
18 employee's disability. This presumption is rebuttable and may be
19 controverted by other evidence, but unless so controverted, the
20 appeals board is bound to find in accordance with it.

21 (C) Any employer who refuses to reinstate an employee to his
22 or her preinjury job in accordance with the requirements of this
23 section shall pay a penalty of one hundred dollars (\$100) per day
24 for each day the employer is in violation of this paragraph, plus
25 the employee's full wages and benefits. Nothing in this paragraph
26 shall preclude an employer from objecting to the opinion of the
27 treating physician pursuant to Section 4062 or from obtaining an
28 opinion from an agreed medical evaluator or qualified medical
29 evaluator pursuant to that section if the employer pays the
30 employee his or her full wages and benefits due for that period.
31 The report of the agreed medical evaluator or qualified medical
32 evaluator shall be based on an in-person physical examination of
33 the employee. If the report of the agreed medical evaluator or the
34 qualified medical evaluator states that the employee is unable to
35 perform the full requirements of the employee's regular position,
36 or is unable to perform the full requirements of the employee's
37 regular position without the risk of further injury or illness to the
38 employee ~~or the risk of injury to others~~ being increased due to the
39 effects of the injury or illness, then the employer shall have no
40 further obligation to pay the employee full wages and benefits

pursuant to this paragraph for any period after the date of service of the report, and the employer shall not be liable for penalties for a violation pursuant to this paragraph. Where the report of the agreed medical evaluator or the qualified medical evaluator does not concur with the report from the treating physician, the employee shall not be liable for the repayment of any wages, benefits, or penalty moneys received.

(5) Any insurer that advises, directs, or threatens an insured employer, under penalty of cancellation, a raise in premium, or for any other reason, to discharge or in any manner discriminate against an employee because the employer testified or made known his or her intention to testify in another employee's case before the appeals board, is guilty of a misdemeanor.

~~(5)~~

(6) It shall be presumed that an employer has discriminated against an employee in violation of paragraph (1) if the employer denies an employee the right to predesignate a treating physician in accordance with subdivision (d) of Section 4600 prior to injury or illness or denies an employee the right to see his or her properly predesignated physician or a medical provider to whom the predesignated physician has referred the employee after the injury or illness.

~~(6)~~

(7) Proceedings for increased compensation as provided in paragraph (1), or for reinstatement and reimbursement for lost wages and work benefits, are to be instituted by filing an appropriate petition with the appeals board, but these proceedings may not be commenced more than one year from the discriminatory act or date of termination of the employee. The appeals board is vested with full power, authority, and jurisdiction to try and determine finally all matters specified in this section subject only to judicial review, except that the appeals board shall have no jurisdiction to try and determine a misdemeanor charge. The appeals board may refer and any worker may complain of suspected violations of the criminal misdemeanor provisions of this section to the Division of Labor Standards Enforcement, or directly to the office of the public prosecutor.

SEC. 2. Section 3201.81 of the Labor Code is amended to read:

3201.81. In the horse racing industry, the organization certified by the California Horse Racing Board to represent the majority of

1 licensed jockeys pursuant to subdivision (b) of Section 19612.9
2 of the Business and Professions Code is the labor organization
3 authorized to negotiate the collective bargaining agreement
4 establishing an alternative dispute resolution system for licensed
5 jockeys pursuant to Section 3201.7.

6 SEC. 3. Section 4658.5 of the Labor Code is amended to read:

7 4658.5. (a) (1) Except as provided in Section 4658.6, if the
8 injury causes permanent partial disability and the injured employee
9 does not return to work for the employer within 60 days of the
10 termination of temporary disability, the injured employee shall be
11 eligible for a supplemental job displacement benefit in the form
12 of a nontransferable voucher for education-related retraining or
13 skill enhancement, or both, at state-approved or accredited schools,
14 as follows:

15 (A) Up to four thousand dollars (\$4,000) for permanent partial
16 disability awards of less than 15 percent.

17 (B) Up to six thousand dollars (\$6,000) for permanent partial
18 disability awards between 15 and 25 percent.

19 (C) Up to eight thousand dollars (\$8,000) for permanent partial
20 disability awards between 26 and 49 percent.

21 (D) Up to ten thousand dollars (\$10,000) for permanent partial
22 disability awards between 50 and 99 percent.

23 (2) Except as provided in Section 4658.6, for injuries occurring
24 on or after January 1, 2008, if the injury causes ~~compensable~~
25 ~~disability~~ *permanent partial disability and the injured employee*
26 *does not return to work for the employer* within 60 days after the
27 disability becomes permanent and stationary, the employee shall
28 be entitled to a supplemental job displacement benefit in the form
29 of a nontransferable voucher for education-related retraining or
30 skill enhancement, or both, at state accredited schools. *The voucher*
31 *shall not exceed a total amount of ten thousand dollars (\$10,000).*
32 The maximum amount of the voucher available for the payment
33 of tuition, fees, books, and other expenses required by the school
34 in any one semester, in any one quarter, or in any other academic
35 term into which the school divides the academic year shall be
36 prorated for the academic term at a rate not to exceed five thousand
37 dollars (\$5,000) per year.

38 (b) The voucher may be used for payment of tuition, fees, books,
39 and other expenses required by the school for retraining or skill
40 enhancement. No more than 10 percent of the voucher moneys

1 may be used for vocational or return to work counseling. The
2 administrative director shall adopt regulations governing the form
3 of payment, direct reimbursement to the injured employee upon
4 presentation to the employer of appropriate documentation and
5 receipts, and any other matters necessary to the proper
6 administration of the supplemental job displacement benefit.

7 (c) Within 10 days of the date of the last payment of temporary
8 disability the employer shall provide to the employee, in the form
9 and manner prescribed by the administrative director, information
10 that provides notice of rights under this section. This notice shall
11 be sent by certified mail.

12 (d) Except as provided in paragraph (2) of subdivision (a), this
13 section shall apply to injuries occurring on or after January 1, 2004.

14 SEC. 4. Section 4658.6 of the Labor Code is amended to read:

15 4658.6. The employer shall not be liable for the supplemental
16 job displacement benefit within 60 days of the disability becoming
17 permanent and stationary if the employer offers the injured
18 employee regular work, modified work, or alternative work in the
19 form and manner prescribed by the administrative director, lasting
20 for a period of at least 12 months.